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No. 82-873

IN THE

Supreme Court of the United States

October Term, 1982

STEVEN ALLEN RICE; ANITA VIVIAN MILLER; CHERYL SAUBEL MIRANDA; ELLEN RICE WARD; BOBBIE RAY PRECKWINKLE; and LAVERNE SAUBEL NELSON,

Petitioners,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY, a corporation; UNITED STATES OF AMERICA; 33.49 ACRES OF LAND IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA; *et al.*,

Respondents.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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Parties.

The parties to this proceeding are the six Indian allottees (Steven Allen Rice, Anita Vivian Miller, Cheryl Saubel Miranda, Ellen Rice Ward, Bobbie Ray Preckwinkle, and Laverne Saubel Nelson); the Southern California Edison Company (a corporation); the United States; approximately 33.49 acres of land located in the County of Riverside, State of California; Goodyear Service Stores; John H. Wingate, Jr.; Timothy J. White; John R. Stotts, Jr.; Vernon H. Halbrook, d/b/a Wingate Air Conditioning Service; and unknown others. In addition, the following are the subsidiaries and affiliates of Respondent Southern California Edison Company:

Associated Southern Investment Company
Bear Creek Uranium Company
Calabasas Communications Co.
Calabasas Park Co.
Calabasas Park Co., Inc.*
California Electric Power Company*
Electric Systems Company
Energy Services, Inc.
Mono Green Mountain Company
Mono Power Company
Mono Power Company (Bolivia)*
Mono Power Company (Italy)*
Mono Power Company (Malaysia)*
Mono Power Company (Nicaragua)*
Mono Power Company (Papua, New Guinea)*
Mono Power Company (Peru)*
Palo Verde Uranium Venture*
Rocky Mountain Energy Company — Mono Power Company — Halliburton Company Uranium Partnership
SCE Capital Company
Southern California Edison Finance Company N.V.
Southern Surplus Realty Co.

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*Inactive.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

Respondent SOUTHERN CALIFORNIA EDISON COMPANY ("Edison") generally agrees with Petitioners' Statement of the Case insofar as it summarizes the proceedings to date and the legal arguments raised by Petitioners. However, Petitioners' statement includes certain comments which need clarification.

As stated by Petitioners, this case involves an action in eminent domain brought by Edison to acquire a right-of-way over certain lands allotted to by Petitioners. At page 11 of their Brief, Petitioners make certain statements that

the question involved in this case is whether a party possessing the power of eminent domain may be able to take allotted lands "more or less at will" and whether such a party may take allotments "essentially for the asking . . . ." Statements such as these seriously mischaracterize the condemnation process, in which it is the obligation of the Federal District Court to insure that the parties whose property is being acquired are afforded their constitutionally guaranteed safeguards. The very nature of the condemnation process is that land may not be acquired unless it is necessary for a public use, and, if it is, the property owners that they receive just compensation. Petitioners themselves note on page 10 of their Brief that the money paid to them was "based on a stipulation regarding just compensation . . ." pursuant to which the District Court entered its judgment. The parties also stipulated that the subject property was being acquired for a public purpose. Having so stipulated, it would appear inconsistent for the Petitioners to now assert that their property is being taken "essentially for the asking . . . ."

REASONS FOR DENYING THE PETITION.

I.

The Subject Statute Is Clear and There Are No Significant Questions of Interpretation Involved.

25 U.S.C. §357 provides that allotted lands "may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned . . . ." However, the Petitioners assert that the fact that 25 U.S.C. §§323-4 provide a means of acquiring allotted lands through negotiation and consent means that the process afforded under Section 357 has been repealed. What this argument fails to consider is the fact that parties are always free to negotiate the sale of property, but where one of the parties has the power of eminent domain it may acquire such property by condemnation if an attempt at negotiation fails.

The fact that Congress has provided a procedure whereby property may be acquired by consensual means cannot logically be interpreted to mean that Congress has repealed by implication a statute providing for the acquisition of land for a public use by means of the exercise of the power of eminent domain. As noted by Petitioners at page 11 of their Brief, both the Ninth and Tenth Circuits (which include much of the Western United States, where these questions are most likely to arise) have resolved these questions in favor of the party seeking to exercise the power of eminent domain. Therefore, there appears to be no conflict among the circuits which have addressed this question.

In *United States v. Clarke*, 445 U.S. 253, 63 L. Ed. 2d 373, 100 S.Ct. 1127 (1980), this Court considered the question of whether 25 U.S.C. §357 authorizes a taking by mere occupation of the property, as opposed to filing a formal condemnation action, and determined that it did not. How-

ever, in reaching this conclusion, the Court noted that "this is a case in which the meaning of a statute may be determined by the admittedly old fashioned but nonetheless still entirely appropriate 'plain meaning' canon of statutory construction." 445 U.S. 253, 254. The "plain meaning" of Section 357 is clear — allotted land is subject to condemnation, just like other privately held land.

In *Clarke*, it was determined that the agencies involved had not acquired title because they had *not* brought an action in eminent domain. This Court stated that "we hold that only in such a formal judicial proceeding may lands such as this be acquired . . . ." *Id.* In the subject case, such an action was brought in accordance with 42 U.S.C. §357.

II.

It Is Clear That Land Allotted in Severalty Is Not Devoted to a Public Purpose.

The Petitioners correctly argue that under California law property which is devoted to a public purpose may be condemned only if the complaint alleges that the intended use is a more necessary public use, or at least not incompatible with the existing public use. However, for purposes of the exercise of the power of eminent domain, allotted land is not deemed to be devoted to a public use. To reach this conclusion, it is not necessary to look any farther than the language of 25 U.S.C. §357 itself. This section allows condemnation of allotted lands "for *any* public purpose" (emphasis added). Although such land might be considered to be devoted to a public use for other purposes, the above language makes it clear that it was not to be so deemed for purposes of condemnation. The fact that Congress authorized condemnation for *any* public purpose clearly demonstrates that it did not consider such land — which is held

by the individual allottee in virtual fee ownership — to be devoted to a public purpose.

The notion that land allotted in severalty is devoted to a private, rather than public, use is wholly consistent with the nature of the ownership. In *United States v. Minnesota*, 113 F. 2d 770 (8th Cir. 1940), the Court described the nature of the title held by an allottee:

> "The land involved, being allotted in severalty, is no longer a part of the reservation, nor is it tribal land. The virtual fee is in the allottee, with certain restrictions on the right of alienation." 113 F. 2d 770, 773.

Thus, under 25 U.S.C. §357, Congress mandated that allotted land is subject to the power of eminent domain to the same extent that other privately held land is. To hold that allotted land is devoted to a public purpose and therefore not subject to condemnation would be to negate the obvious intent of Congress expressed in Section 357.

III.

California's Venue Statute Has Not Disabled Respondent From Bringing an Action Under 25 U.S.C. §357.

Petitioners correctly state that all actions brought under 25 U.S.C. §357 must be filed in Federal District Court, which is where this case was brought. However, Petitioners erroneously assert that because California law provides for eminent domain actions to be brought in Superior Court, the power conferred by Section 357 does not exist in the State of California. This argument implicitly assumes that the grant of the power of eminent domain with respect to Section 357 is a grant by the state; rather, the grant is from the Federal Government but merely made with reference to state law. Absent Congressional authorization, the State of California could not authorize the exercise of the power of eminent domain over the subject property; therefore, the

grant of authority must be from the Federal Government, so that Federal directives with respect to venue and jurisdiction must be followed and cannot be altered by the State. Similarly, the power cannot be diminished or negated by a State statute pertaining to venue.

Conclusion.

For the reasons stated herein, Respondent Edison urges the Court to deny the petition on file in this action.

Respectfully submitted,

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